

SENATE BILL 387

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2003 Regular Session
(31r0013)

ENROLLED BILL

-- Education, Health, and Environmental Affairs/Health and Government Operations --

Introduced by **Chairman, Education, Health, and Environmental Affairs
Committee (By Request - Departmental - Health and Mental Hygiene)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Maryland Optometry Act – Replacement Contact Lenses – Clarifications and**
3 **Modifications**
4 **Department of Health and Mental Hygiene - Selling and Dispensing of**
5 **Contact Lenses and Replacement Contact Lenses**

6 FOR the purpose of ~~modifying certain prohibitions against selling contact lenses~~
7 ~~without a valid and unexpired replacement contact lens prescription; requiring~~
8 the Department of Health and Mental Hygiene to adopt regulations that govern
9 the selling and dispensing of certain contact lenses; prohibiting a person from
10 knowingly selling or dispensing certain contact lenses under certain
11 circumstances; providing that a person who violates a certain provision of law is
12 guilty of a misdemeanor and subject to a certain fine; specifying that certain
13 provisions of law do not limit the right of the State Board of Examiners in
14 Optometry to regulate an optometrist who knowingly sells or dispenses certain
15 contact lenses; providing for the construction of this Act; clarifying a certain
16 ~~terms~~ defined term and certain language; and generally relating to the

1 ~~Maryland Optometry Act~~ selling and dispensing of contact lenses and
 2 replacement contact lenses.

3 BY adding to

4 Article - Health - General

5 Section 24-301.1

6 Annotated Code of Maryland

7 (2000 Replacement Volume and 2002 Supplement)

8 BY repealing and reenacting, with amendments,

9 Article - Health Occupations

10 Section 11-101, 11-404.4, and 11-504

11 Annotated Code of Maryland

12 (2000 Replacement Volume and 2002 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article - Health - General**

16 24-301.1.

17 (A) SUBJECT TO SUBSECTION (D) OF THIS SECTION, THE DEPARTMENT SHALL
 18 ADOPT REGULATIONS THAT GOVERN THE SELLING AND DISPENSING OF PLANO AND
 19 ZERO-POWERED CONTACT LENSES AND PLANO AND ZERO-POWERED REPLACEMENT
 20 CONTACT LENSES.

21 (B) A PERSON MAY NOT KNOWINGLY SELL OR DISPENSE CONTACT LENSES OR
 22 REPLACEMENT CONTACT LENSES WITHOUT A VALID AND UNEXPIRED PRESCRIPTION
 23 OR REPLACEMENT CONTACT LENS PRESCRIPTION.

24 (C) A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF
 25 A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING
 26 \$1,000.

27 (D) THIS SECTION DOES NOT LIMIT THE RIGHT OF THE STATE BOARD OF
 28 EXAMINERS IN OPTOMETRY TO REGULATE AN OPTOMETRIST WHO KNOWINGLY
 29 SELLS OR DISPENSES CONTACT LENSES OR REPLACEMENT CONTACT LENSES
 30 WITHOUT A VALID AND UNEXPIRED PRESCRIPTION OR REPLACEMENT CONTACT
 31 LENS PRESCRIPTION.

32 **Article - Health Occupations**

33 11-101.

34 (a) In this title the following words have the meanings indicated.

35 (b) "Board" means the State Board of Examiners in Optometry.

1 (c) "Diagnostically certified optometrist" means a licensed optometrist who is
2 certified by the Board to administer topical ocular diagnostic pharmaceutical agents
3 to the extent permitted under § 11-404 of this title.

4 (d) "License" means, unless the context requires otherwise, a license issued by
5 the Board to practice optometry.

6 (e) "Licensed optometrist" means, unless the context requires otherwise, an
7 optometrist who is licensed by the Board to practice optometry.

8 (f) "Optometrist" means an individual who practices optometry.

9 (g) (1) "Practice optometry" means:

10 (i) Subject to §§ 11-404 and 11-404.2 of this title, to use any means
11 known in the science of optics or eye care, except surgery:

12 1. To detect, diagnose, and subject to §§ 11-404 and 11-404.2
13 of this title, treat, subject to this title, any optical or diseased condition in the human
14 eye; or

15 2. To prescribe eyeglasses, LENSES, or CONTACT lenses to
16 correct any optical or visual condition in the human eye;

17 (ii) To give advice or direction on the fitness or adaptation of
18 eyeglasses or ~~CONTACT~~ lenses to any individual for the correction or relief of a
19 condition for which eyeglasses or ~~CONTACT~~ lenses are worn; or

20 (iii) To use or permit the use of any instrument, test card, test type,
21 test eyeglasses, test lenses, or other device to aid in choosing eyeglasses or ~~CONTACT~~
22 lenses for an individual to wear.

23 (2) Subject to §§ 11-404 and 11-404.2 of this title, "practice optometry"
24 includes:

25 (i) The administration of topical ocular diagnostic pharmaceutical
26 agents;

27 (ii) The administration and prescription of therapeutic
28 pharmaceutical agents; and

29 (iii) The removal of superficial foreign bodies from the cornea and
30 conjunctiva.

31 (h) "Therapeutically certified optometrist" means a licensed optometrist who
32 is certified by the Board to practice optometry to the extent permitted under §
33 11-404.2 of this title.

34 11-404.4.

35 (a) (1) In this section the following words have the meanings indicated.

1 (2) "Replacement contact lens prescription" means a prescription
2 prepared by a licensed optometrist containing the information specified in this section
3 and written expressly for the purpose of providing lenses which have already been
4 properly fitted.

5 (3) "Immediate follow-up care" is that period of contact lens fitting time
6 required to reach a contact lens prescription that is appropriate to the documented
7 clinical needs of the patient.

8 (b) A licensed optometrist shall ensure that each replacement contact lens
9 prescription that the licensed optometrist prescribes for contact lenses:

10 (1) Contains all the information necessary for the replacement contact
11 lens prescription to be properly dispensed, including but not limited to the:

12 (i) Lens manufacturer;

13 (ii) Type of lens;

14 (iii) Power of the lens, INCLUDING PLANO OR ZERO-POWERED
15 CONTACT LENSES;

16 (iv) Base curve;

17 (v) Lens size;

18 (vi) Name of the patient;

19 (vii) Date the prescription was given to the patient;

20 (viii) Name and office location of the licensed optometrist who
21 writes the replacement contact lens prescription; and

22 (ix) Expiration date of the replacement contact lens prescription;
23 and

24 (2) Is reduced to writing and placed in the patient's permanent file.

25 (c) (1) (i) After a licensed optometrist releases the patient from
26 immediate follow-up care, the patient may request the replacement contact lens
27 prescription from the licensed optometrist.

28 (ii) If, after examination, the patient's prescription has not changed
29 since the last examination, a licensed optometrist shall comply with the provisions of
30 paragraph (2) of this subsection without requiring the patient to purchase contact
31 lenses or to undergo immediate follow-up care.

32 (2) (i) Upon the request of a patient of a licensed optometrist, and
33 without cost to the patient, the licensed optometrist shall provide the patient's
34 replacement contact lens prescription to the patient or the patient's designee.

1 (ii) In responding to a request under paragraph (1)(i) of this
2 subsection, a licensed optometrist shall transmit the contact lens prescription by
3 mail, telephone, facsimile, e-mail, or any other means of communication that will,
4 under normal circumstances, result in the designee receiving the information within
5 7 business days after the patient's request.

6 (iii) The replacement contact lens prescription that the licensed
7 optometrist provides the patient under subparagraph (i) of this paragraph:

8 1. Shall contain the information necessary for the proper
9 duplication of the current prescription of the patient;

10 2. Shall contain, subject to the provisions of subsection (d) of
11 this section, an expiration date for the replacement contact lens prescription of not
12 more than 24 months from the time the patient was first examined; and

13 3. May contain wearing guidelines or specific instructions for
14 use of the contact lenses by the patient, or both.

15 (d) The licensed optometrist shall enter into the patient's medical record the
16 valid clinical reasons for a shorter expiration date and shall provide the patient with
17 a written and oral explanation of the clinical reasons for a shorter expiration date.

18 (e) When a patient's ~~CONTACT LENS~~ prescription is dispensed by a person
19 other than the licensed optometrist or a person associated directly or indirectly with
20 the licensed optometrist, the licensed optometrist is not liable for any injury to or
21 condition of a patient caused solely by the negligence of the dispenser.

22 (f) A licensed optometrist who releases a replacement contact lens
23 prescription to a patient may provide the patient with a written statement that
24 wearing improperly fitted contact lenses may cause harm to the patient's eyes and
25 that the patient should have an eye examination if there are any changes in the
26 patient's vision, including pain or vision loss.

27 (g) (1) A licensed optometrist who fills or provides a contact lens
28 prescription shall maintain a record of that prescription in accordance with § 4-403 of
29 the Health - General Article.

30 (2) A person other than a licensed optometrist who fills a contact lens
31 prescription shall maintain a record of that prescription for 5 years.

32 (h) The Board may impose a civil fine of no more than \$1,000 on a licensed
33 optometrist who fails to provide a replacement contact lens prescription or who
34 knowingly dispenses contact lenses without a valid and unexpired replacement
35 contact lens prescription, or who otherwise fails to comply with this title.

1 11-504.

2 (a) ~~{Knowingly selling}~~ ~~SELLING~~ or dispensing CONTACT LENSES OR
3 replacement contact lenses without a valid and unexpired PRESCRIPTION OR
4 replacement contact lens prescription shall be considered a violation of this title.

5 (b) The Board shall investigate any alleged violation of this section or §
6 11-404.4 of this title and may, notwithstanding § 11-205 of this title:

7 (1) Issue subpoenas, administer oaths, and examine witnesses; and

8 (2) Enforce any provision of this title by injunction or other appropriate
9 proceedings.

10 (c) An action under this section is in addition to and not instead of criminal
11 prosecution under § 11-505 of this subtitle.

12 SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act
13 may not be construed to affect, alter, or modify in any way, the decision in, or results
14 of, Board of Examiners in Optometry, et al v. Richard Spitz, Jr., 300 Md. 466 (1984).

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2003.